

O

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

CLARENCE ZIMMERMAN,  
Petitioner,  
v.  
FREDRICK FOULK, Warden,  
Respondent.

Case No. CV 13-8597-RGK (KK)

**ORDER ACCEPTING FINDINGS  
AND RECOMMENDATION OF  
UNITED STATES MAGISTRATE  
JUDGE**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the First Amended Petition for a Writ of Habeas Corpus, the records on file, and both the original and final Report and Recommendation of the United States Magistrate Judge. The Court has engaged in a *de novo* review of those portions of the original Report to which Petitioner has objected. The Court accepts the Final Report and Recommendation of the Magistrate Judge.

In his objections to the original Report, Petitioner also requests an evidentiary hearing. However, in habeas proceedings, “an evidentiary hearing is not required on issues that can be resolved by reference to the state court record.” Totten v. Merkle, 137 F.3d 1172, 1176 (9th Cir. 1998); see also Earp v. Ornoski, 431 F.3d 1158, 1173 (9th Cir. 2005). “It is axiomatic that when issues can be resolved with reference to the state court record, an evidentiary hearing becomes nothing more than a futile exercise.”

1 Totten, 137 F.3d at 1176. Here, the Magistrate Judge concluded all of Petitioner's  
2 claims could be resolved by reference to the state court record. Accordingly, the Court  
3 denies Petitioner's request for an evidentiary hearing.

4 IT IS THEREFORE ORDERED that Judgment be entered (1) denying the First  
5 Amended Petition for a Writ of Habeas Corpus; and (2) dismissing this action with  
6 prejudice.

7  
8 Dated: June 2, 2015

9  
10 

11 HONORABLE R. GARY KLAUSNER  
12 UNITED STATES DISTRICT JUDGE  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28